

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ROSE TREE FIRE COMPANY NO. 1)	File No. 0006440207
)	
Request for Waiver of the Suspension on the)	
Acceptance and Processing of Certain Part 22 and)	
90 Applications for 470-512 MHz (T-Band))	
Spectrum)	

ORDER

Adopted: April 24, 2019**Released: April 25, 2019**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The Rose Tree Fire Company No. 1 (Rose Tree), located in Upper Providence Township, Pennsylvania, filed an application¹ to modify public safety radio Station WQCG469 by raising the antenna height of a base station operating in the 470-512 MHz band (T-Band). Rose Tree requests a waiver² of the Wireless Telecommunications Bureau's and the Public Safety and Homeland Security Bureau's (Bureaus) suspension of the processing of certain T-Band applications.³ We grant the Waiver Request subject to conditions.

II. BACKGROUND

2. Rose Tree proposes to increase its antenna height from 19 meters to 47 meters to allow it to more reliably communicate with its emergency responders within its primary service area.⁴ Since 2006, Rose Tree has been authorized on Station call sign WQCG469, at one location in Upper Providence Township, Pennsylvania (Township) for frequencies 501.150 MHz and 501.600 MHz at 25 watts effective radiated power.⁵ Rose Tree notes that its "coverage area is comprised of wooded, hilly terrain covering two stream valleys and topography which presents challenges for radio transmissions into certain areas of the Township and beyond."⁶ Rose Tree contends that "[a]fter initial construction, it was discovered that reliable coverage to mobiles and portables from the fire station was not possible in certain areas of the Township, thereby requiring emergency personnel to resort to use of cell phones to communicate."⁷ Rose Tree states that its radio communications system has been "inadequate because of

¹ File No. 0006440207 (filed Aug. 27, 2014).

² *Id.*, attached Waiver Request (dated Aug. 27, 2014).

³ *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum*, Public Notice, 27 FCC Rcd 4218 (WTB/PSHSB 2012) (*Suspension Notice*).

⁴ Waiver Request at 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1-2.

the heavy foliage in the coverage area and the tree and building clutter surrounding the present antenna.”⁸ Rose Tree’s consulting land mobile radio technicians and engineers determined that “adequate coverage of the Township and service areas beyond would require an antenna at least approximately 47 meters high to clear the surrounding terrain obstructions and trees.”⁹ Rose Tree argues that “the increase in antenna height will allow emergency responders to communicate within the entire township they serve, and the adjacent townships they support in critical emergencies.”¹⁰

3. On April 26, 2012, the Bureaus suspended the acceptance and processing of certain applications for T-Band UHF frequencies that could alter the spectrum landscape (*Suspension Notice*).¹¹ The Bureaus sought to stabilize the spectral environment while the Commission considers issues surrounding future use of the T-Band and implementation of the Middle Class Tax Relief and Job Creation Act of 2012 (the Act).¹² In order to stabilize the existing spectrum landscape, the Bureaus suspended the acceptance and processing of T-Band licensing applications that could alter the spectrum landscape and thereby make implementing the Act more difficult or costly.¹³ Specifically, the Bureaus will not accept or process applications to modify existing licenses by changing technical parameters that expand the station’s spectral or geographic footprint, including but not limited to, increases in bandwidth, power level, antenna height, or area of operation.¹⁴ Applicants may have recourse to the waiver provisions in Section 1.925 to request an exception to the filing and processing freeze.¹⁵

III. DISCUSSION

4. To obtain a waiver, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁷

5. An increase in antenna height would expand the licensed composite footprint of WQCG469, and thus, the application is frozen under the *Suspension Notice*. Rose Tree states that the

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Suspension Notice*.

¹² *Id.*; Pub. L. No. 112-96, 126 Stat. 156 (2012) (the Act). Section 6103 of the Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall “reallocate the spectrum in the 470-512 MHz band ... currently used by public safety eligibles” *Id.*, § 6103(a). The Act instructs the Commission to “begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum.” *Id.* It also provides that “relocation of public safety entities from the T-Band Spectrum” shall be completed not later than two years after completion of the system of competitive bidding.” *Id.*, § 6103(b), (c).

¹³ *Suspension Notice*, 27 FCC Rcd at 4218.

¹⁴ *Id.* at 4219.

¹⁵ *Id.*, note 4.

¹⁶ 47 CFR § 1.925(b)(3)(i-ii).

¹⁷ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

modification “would not materially increase” the 21 dBu interference contour and submitted a contour plot.¹⁸ Since such characterization is subjective, we examined other factors. No co-channel incumbent licensees are in the Philadelphia urbanized area, so no licensees would be affected by the proposed modification. Rose Tree contends that “no change in equipment nor any expense is necessary for the Applicant in that the antennas, materials and associated feed lines and labor are being provided by the monopole owner, American Tower Corporation, to assist the Applicant in solving its critical communication needs.”¹⁹

6. However, notwithstanding Rose Tree’s receiving tower access and feed line at no cost, the modification does add facilities (tower access and feed line) and thus would increase the cost of relocating Rose Tree’s station from the T-Band spectrum as required by the Act, i.e., if the modification application were approved without conditions, the relocation cost would be premised on the coverage obtained with the proposed modified facilities, i.e., 25 watts effective radiated power at 72.9 meters above average terrain.²⁰ Accordingly, we are granting the modification application, but conditioning the license so that Rose Tree’s future relocation expense reimbursement, if authorized, will be no greater than the cost to replicate its pre-modification coverage, i.e. the current coverage achieved with an effective radiated power of 25 watts at an antenna height of 36.9 meters above average terrain.²¹

7. Therefore, with the foregoing condition, we find that the underlying purpose of the *Suspension Notice* would not be served by its application in this case. We also find that waiver of the *Suspension Notice* would be in the public interest because it would increase the reliability of Rose Tree’s public safety radio system, would ensure the safety of first responders and their ability to communicate while serving the public in the Upper Providence Township and Philadelphia metropolitan area, and would not increase the cost of relocating Rose Tree’s facilities.

IV. CONCLUSION

8. Accordingly, we find that a waiver of the *Suspension Notice* is warranted, and the application should be processed. We impose the following special conditions:

- Authorization is subject to implementation of Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (enacted February 22, 2012), which provides that, not later than nine years after the date of enactment, the Commission shall reallocate T-Band spectrum “currently used by public safety eligibles.” It also provides that “relocation of public safety entities from the T-Band Spectrum” shall be completed not later than two years after completion of the system of competitive bidding. See the Middle Class Tax Relief and Job Creation Act of 2012, Section 6103(b), (c).
- Because the antenna height modification to Location 1 (39-56-05.6 N, 075-23-23.1 W) is granted after passage of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (enacted February 22, 2012), the licensee shall have no expectation of receiving funds exceeding the cost based on licensee’s pre-modification facilities (i.e., the coverage attained with an effective radiated power of 25 watts at an antenna height of 36.9 meters above average terrain at Location 1), to relocate its facilities from the 470-512 MHz band spectrum), assuming the licensee is eligible for reimbursement. See the Middle Class Tax Relief and Job Creation Act of 2012, Section 6103(b).

¹⁸ Waiver Request at 1; *see also* File No. 0006440207, attached Contour Study.

¹⁹ *Id.* at 2-3.

²⁰ See Rose Tree modification application, File No. 0006440207.

²¹ See WQGC469 license at 1.

- Waiver of the T-Band Suspension, 27 FCC Rcd 4218, is granted.

V. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 1, 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, the Waiver Request filed by the Rose Tree Fire Company No. 1, IS GRANTED as conditioned herein and to the extent set forth in this order.

10. IT IS FURTHER ORDERED, that the foregoing application, File No. 0006440207, SHALL BE PROCESSED as conditioned herein.

11. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission's rules, 47 CFR §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau